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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

) Case No:  
)  
) DENISE MENICHELLO, individually )  
) and on behalf of all others similarly ) **CLASS ACTION**  
) situated, )  
) **FIRST AMENDED COMPLAINT**  
) **FOR VIOLATIONS OF:**  
)  
)  
) vs. ) 1. NEGLIGENT VIOLATIONS  
) OF THE TELEPHONE  
) CONSUMER PROTECTION  
) ACT [47 U.S.C. §227 *et seq.*]  
) CREATIVE AIR SOLUTIONS INC., ) 2. WILLFUL VIOLATIONS  
) OF THE TELEPHONE  
) and DOES 1 through 10, inclusive, and ) CONSUMER PROTECTION  
) ACT [47 U.S.C. §227 *et seq.*]  
) each of them, )  
)  
) Defendant. )

**DEMAND FOR JURY TRIAL**

Plaintiff DENISE MENICHELLO (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

## NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of CREATIVE AIR SOLUTIONS INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s home telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

## JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a California company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to *28 U.S.C. § 1391(b)(2)* because Defendant does business within the State of California and Plaintiff resides within the County of Orange.

## PARTIES

4. Plaintiff, DENISE MENICHELLO (“Plaintiff”), is a natural person residing in Huntington Beach, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5. Defendant, CREATIVE AIR SOLUTIONS INC. (“Defendant”) is an air solution company, and is a “person” as defined by 47 U.S.C. § 153 (39).

6. The above named Defendant, and its subsidiaries and agents, are

1 collectively referred to as “Defendants.” The true names and capacities of the  
2 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
3 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
4 names. Each of the Defendants designated herein as a DOE is legally responsible  
5 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
6 Complaint to reflect the true names and capacities of the DOE Defendants when  
7 such identities become known.

8 7. Plaintiff is informed and believes that at all relevant times, each and  
9 every Defendant was acting as an agent and/or employee of each of the other  
10 Defendants and was acting within the course and scope of said agency and/or  
11 employment with the full knowledge and consent of each of the other Defendants.  
12 Plaintiff is informed and believes that each of the acts and/or omissions complained  
13 of herein was made known to, and ratified by, each of the other Defendants.

#### 14 **FACTUAL ALLEGATIONS**

15 8. Beginning in or around October of 2016, Defendant contacted  
16 Plaintiff on Plaintiff’s home telephone number ending in -4272, in an attempt to  
17 solicit Plaintiff to purchase Defendant’s services.

18 9. Plaintiff’s home telephone number ending in -4272 was added to the  
19 National Do-Not-Call Registry on or about July 11, 2003.

20 10. Defendant contacted or attempted to contact Plaintiff from telephone  
21 numbers including (855) 629-9892.

22 11. Defendant’s calls constituted calls that were not for emergency  
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24 12. Such calls constitute solicitation calls pursuant to 47 C.F.R. §  
25 64.1200(c)(2), as they were an attempt to promote or sell Defendant’s services.

26 13. Plaintiff has received numerous solicitation calls from Defendant  
27 within a 12-month period.

28 14. Plaintiff did not have an established business relationship with

1 Defendant during the time of the solicitation calls from Defendant.

2 15. Plaintiff did not give Defendant prior express written consent for  
3 Defendant to call Plaintiff's home telephone for marketing or solicitation purposes.

4 16. Despite this, Defendant continued to call Plaintiff in an attempt to  
5 solicit its services and in violation of the National Do-Not-Call provisions of the  
6 TCPA thus violating Plaintiff's privacy.

7 17. Upon information and belief, at all relevant times, Defendant failed to  
8 establish and implement reasonable practices and procedures to effectively prevent  
9 telephone solicitations in violation of the regulations prescribed under 47 U.S.C. §  
10 227(c)(5).

11 **CLASS ALLEGATIONS**

12 18. The class concerning the National Do-Not-Call violation (hereafter  
13 "The DNC Class") is defined as follows:

14 All persons within the United States registered on the National  
15 Do-Not-Call Registry for at least 30 days, who had not granted  
16 Defendant prior express consent nor had a prior established business  
17 relationship, who received more than one call made by or on behalf of  
18 Defendant that promoted Defendant's products or services, within any  
19 twelve-month period, within four years prior to the filing of the  
20 complaint.

21 19. Plaintiff represents, and is a member of, The DNC Class, consisting  
22 of all persons within the United States registered on the National Do-Not-Call  
23 Registry for at least 30 days, who had not granted Defendant prior express consent  
24 nor had a prior established business relationship, who received more than one call  
25 made by or on behalf of Defendant that promoted Defendant's products or services,  
26 within any twelve-month period, within four years prior to the filing of the  
27 complaint.

28 20. Defendant, its employees and agents are excluded from The Class.  
Plaintiff does not know the number of members in The Class, but believes the Class

1 members number in the thousands, if not more. Thus, this matter should be  
2 certified as a Class Action to assist in the expeditious litigation of the matter.

3 21. The Class is so numerous that the individual joinder of all of its  
4 members is impractical. While the exact number and identities of The Class  
5 members are unknown to Plaintiff at this time and can only be ascertained through  
6 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
7 The Class includes thousands of members. Plaintiff alleges that The Class  
8 members may be ascertained by the records maintained by Defendant.

9 22. Plaintiff and members of The DNC Class were harmed by the acts of  
10 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
11 and DNC Class members via their telephones for solicitation purposes, thereby  
12 invading the privacy of said Plaintiff and the DNC Class members whose telephone  
13 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class  
14 members were damaged thereby.

15 23. Common questions of fact and law exist as to all members of The  
16 DNC Class which predominate over any questions affecting only individual  
17 members of The DNC Class. These common legal and factual questions, which do  
18 not vary between DNC Class members, and which may be determined without  
19 reference to the individual circumstances of any DNC Class members, include, but  
20 are not limited to, the following:

- 21 a. Whether, within the four years prior to the filing of this  
22 Complaint, Defendant or its agents placed more than one  
23 solicitation call to the members of the DNC Class whose  
24 telephone numbers were on the National Do-Not-Call Registry  
25 and who had not granted prior express consent to Defendant and  
26 did not have an established business relationship with  
27 Defendant;
- 28 b. Whether Defendant obtained prior express written consent to

1 place solicitation calls to Plaintiff or the DNC Class members'  
2 telephones;

3 c. Whether Plaintiff and the DNC Class member were damaged  
4 thereby, and the extent of damages for such violation; and

5 d. Whether Defendant and its agents should be enjoined from  
6 engaging in such conduct in the future.

7 24. As a person that received solicitation calls from Defendant within a  
8 12-month period, who had not granted Defendant prior express consent and did not  
9 have an established business relationship with Defendant, Plaintiff is asserting  
10 claims that are typical of the DNC Class.

11 25. Plaintiff will fairly and adequately protect the interests of the members  
12 of The Class. Plaintiff has retained attorneys experienced in the prosecution of  
13 class actions.

14 26. A class action is superior to other available methods of fair and  
15 efficient adjudication of this controversy, since individual litigation of the claims  
16 of all Class members is impracticable. Even if every Class member could afford  
17 individual litigation, the court system could not. It would be unduly burdensome  
18 to the courts in which individual litigation of numerous issues would proceed.  
19 Individualized litigation would also present the potential for varying, inconsistent,  
20 or contradictory judgments and would magnify the delay and expense to all parties  
21 and to the court system resulting from multiple trials of the same complex factual  
22 issues. By contrast, the conduct of this action as a class action presents fewer  
23 management difficulties, conserves the resources of the parties and of the court  
24 system, and protects the rights of each Class member.

25 27. The prosecution of separate actions by individual Class members  
26 would create a risk of adjudications with respect to them that would, as a practical  
27 matter, be dispositive of the interests of the other Class members not parties to such  
28 adjudications or that would substantially impair or impede the ability of such non-

1 party Class members to protect their interests.

2 28. Defendant has acted or refused to act in respects generally applicable  
3 to The Class, thereby making appropriate final and injunctive relief with regard to  
4 the members of the Class as a whole.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(c)**

8 **On Behalf of the DNC Class**

9 29. Plaintiff repeats and incorporates by reference into this cause of action  
10 the allegations set forth above at Paragraphs 1-28.

11 30. The foregoing acts and omissions of Defendant constitute numerous  
12 and multiple negligent violations of the TCPA, including but not limited to each  
13 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular  
14 *47 U.S.C. § 227 (c)(5)*.

15 31. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,  
16 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory  
17 damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

18 32. Plaintiff and the DNC Class members are also entitled to and seek  
19 injunctive relief prohibiting such conduct in the future.

20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection**  
22 **Act**

23 **47 U.S.C. §227 et seq.**

24 **On Behalf of the DNC Class**

25 33. Plaintiff repeats and incorporates by reference into this cause of action  
26 the allegations set forth above at Paragraphs 1-28.

27 34. The foregoing acts and omissions of Defendant constitute numerous  
28 and multiple knowing and/or willful violations of the TCPA, including but not



1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,  
2 in particular *47 U.S.C. § 227 (c)(5)*.

3 35. As a result of Defendant's knowing and/or willful violations of *47*  
4 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of  
5 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*  
6 *§ 227(c)(5)*.

7 36. Plaintiff and the DNC Class members are also entitled to and seek  
8 injunctive relief prohibiting such conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

11 **FIRST CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 ***47 U.S.C. §227(c)***

- 14 • As a result of Defendant's negligent violations of *47 U.S.C.*  
15 *§227(c)(5)*, Plaintiff and the DNC Class members are entitled to and  
16 request \$500 in statutory damages, for each and every violation,  
17 pursuant to *47 U.S.C. 227(c)(5)*.  
18 • Any and all other relief that the Court deems just and proper.

19 **SECOND CAUSE OF ACTION**

20 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

21 **Act**

22 ***47 U.S.C. §227(c)***

- 23 • As a result of Defendant's willful and/or knowing violations of *47*  
24 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled  
25 to and request treble damages, as provided by statute, up to \$1,500,  
26 for each and every violation, pursuant to *47 U.S.C. §227(c)(5)*.  
27 • Any and all other relief that the Court deems just and proper.



**JURY TRIAL**

37. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 5th Day of April, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
Todd M. Friedman  
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